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HEARING TO EXAMINE IMPLEMENTATION OF CLEAN WATER ACT SECTION 401
AND S. 3303, THE WATER QUALITY CERTIFICATION IMPROVEMENT ACT OF
2018

THURSDAY, AUGUST 16, 2018

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:03 a.m. in
room 406, Dirksen Senate Building, the Honorable John Barrasso
[chairman of the committee] presiding.

Present: Senators Barrasso, Capito, Boozman, Fischer,
Rounds, Ernst, Cardin, Merkley, Gillibrand, Booker, Markey, and
Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

Today, the committee will hold a legislative hearing to examine S. 3303, the Water Quality Certification Improvement Act of 2018. This bill would improve implementation of Section 401 of the Clean Water Act.

Section 401 of the Clean Water Act empowers states with an important role in protecting water quality within their borders. Anyone applying for a federal license or permit must ask the State to certify that resulting discharges into water will not degrade water quality. For decades, States have reviewed projects and issued water quality decisions.

Generally, this process works well. States and Washington, D.C. work together, with clear and defined roles, to solve problems at both the regional and the national level. The State makes sure discharges will not negatively affect water quality. The Federal Government then issues the permit or license with the State's blessing.

This shared authority has been a good example of cooperative federalism. The vast majority of States have honored this shared responsibility. Recently, a few States have hijacked the water quality certification process in order to

delay important projects.

The State of Washington has abused their authority to block the export of coal mined in Wyoming, Utah, Colorado, and Montana. The State of Washington has refused to grant a water quality certification for the Millennium Bulk Terminal project. The project would enable the export of Western coal to markets in Asia.

Japan, South Korea, and other countries want and need this American energy. By preventing this project from moving forward, Washington State has hurt the economy of the entire region and the Nation.

The delay of the export terminal does not just affect the coal industry. The Millennium Bulk Terminal project creates jobs and directly benefits families in Wyoming, Washington, and other Western States. That is why local unions and Cowlitz County, the county where the terminal would be built, support the project.

Washington State's refusal to issue the permit is not just bad for our economy; it is also bad for the environment. Wyoming produces the cleanest burning coal in the United States in a sustainable and safe manner.

The Asian market will continue to use coal even if it cannot get American coal. By refusing to allow Wyoming to export its coal, the State of Washington is pushing these Asian

markets to use coal from non-American sources, sources that are not as clean or safe.

Washington State hired a consultant to evaluate greenhouse gas effects as part of its environmental review process. That consultant, hired by the State of Washington, concluded that mining and exporting American coal could reduce total global greenhouse gas emissions by displacing coal mined elsewhere.

Washington State's actions infringe on interstate and international commerce. That is why Wyoming, and other States, have joined together to take legal action against Washington State.

The State of Washington's obstruction is about politics. It has nothing to do with clean water. The nine reasons that Washington used to deny certification had nothing to do with water quality. The State of Washington's own environmental impact study for the project found there would be no significant impacts to water quality.

The State of New York has taken similar steps to block construction of natural gas pipelines. America is the world's number one producer of natural gas. Pennsylvania has abundant supplies of this resource but New York is blocking gas pipeline projects which would supply States in New England.

In January, power plants and utilities in New England had to take the dramatic and drastic step of importing liquefied

natural gas from Russia to meet their energy demands. It makes no sense for America to import liquefied natural gas from our adversaries, Russia, when we have that resource right here at home.

Using the Clean Water Act simply to delay important projects was clearly not what Congress had in mind when Congress passed the law. That is why I, along with Senators Capito, Inhofe, Daines, and Enzi, sponsored the Water Quality Certification Improvement Act of 2018.

The bill amends Section 401 of the Clean Water Act to clarify the appropriate scope of review for a water quality certification. It clarifies that these reviews are limited to water quality impacts only. It would also put in place procedural guardrails and notice requirements to prevent future abuses.

Under our legislation, States, when evaluating water quality, can only consider discharges from the federally permitted or licensed activity itself, not from other unrelated sources. No longer will a State be able to abuse this authority in order to stop a project from moving forward.

This bill is commonsense legislation to clarify current law, ensure a more predictable permitting process, and to prevent costly delays. Our legislation defends interstate commerce and returns the certification process to what it was

originally designed for, to protect the quality of America's water.

Before I introduce our witnesses for today, I would now like to turn to Senator Gillibrand for her remarks.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE KIRSTEN E. GILLIBRAND, A UNITED STATES SENATOR FROM THE STATE OF NEW YORK

Senator Gillibrand. Thank you, Mr. Chairman.

I join you in welcoming our witnesses here today and our colleague, Steve Daines.

When it comes to protecting the environment, we have a solemn responsibility to do everything we can to protect clean water. Unfortunately, the bill we are hearing testimony on today, the Water Quality Certification Improvement Act of 2018, would fundamentally alter the role States have in permitting projects that cross rivers, streams and wetlands.

The bill substantially robs States of the rights they exercise under the Clean Water Act and abandons the cooperative federalism approach that has been a centerpiece of federal environmental law.

Do not just take my word for it. The Western Governors Association and nine other organizations representing State governments wrote a letter last week raising concerns with the legislative approach.

They wrote "We urge Congress to reject any legislative or administrative effort that would diminish, impair or subordinate States' ability to manage or protect water quality within their own boundaries." The bill we are discussing today would do just that.

I ask unanimous consent to submit their letter for the record.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Gillibrand. Thank you.

I also ask to submit for the record a letter from the New York State Department of Environmental Conservation and the State Attorney General's Office. Those offices state that this bill would "curtail and limit the authority of New York and other States to protect their own water quality resources and the health, safety and welfare of their residents.

"Put another way, the Improvement Act undermines the balanced cooperative federalism intended by Congress in the Clean Water Act."

I ask unanimous consent.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Gillibrand. Thank you.

Interstate pipeline projects often traverse hundreds or even thousands of miles, cross hundreds more streams and impact wetlands in ways to have a cumulative impact on the ability of the State to meet its water quality standards.

Some critics have pointed to a handful of high profile examples where States denied Section 401 certification for major interstate projects. They argue that the States are abusing their role by issuing denials and therefore, the State's role should be restricted.

Those assertions ignore the fact that New York State has denied Section 401 certification only in those instances where the project failed to demonstrate compliance with water quality standards or failed to provide sufficient information to demonstrate compliance.

In 2017, New York State issued approximately 99.9 percent of all requested water quality certifications. Congress intended for States to have significant authority to protect their water quality under the Clean Water Act by setting standards more stringent than those set by the Federal Government. States have a responsibility to make sure those standards are enforced by setting conditions on federally-permitted activities to protect State water quality.

I am concerned that the changes to the Section 401

certification process envisioned in the bill would create a situation where applicants are given federal permits to violate State water quality standards. That should not happen.

I am also concerned that this bill would set an arbitrary and unrealistic 90-day timeline for States to determine whether an application is complete. This is inconsistent with State and federal practices and ignores the fact that these projects often change during the course of the review requiring new or different information.

Additionally, the bill would prevent States from denying water quality certifications if an applicant fails to provide adequate information to the State. This is a heavy-handed approach designed to force States into approving potentially risky projects.

It punishes States for making decisions that some of my colleagues do not like undermining the State's role in trying the Clean Water Act and repeatedly upheld by the courts. This is not cooperative federalism. We should be listening to our States and working with them not against them.

Mr. Chairman, before I finish, I would like to ask unanimous consent to submit Ranking Member Carper's statement for the record.

Senator Barrasso. Without objection.

[The prepared statement of Senator Carper follows:]

Senator Gillibrand. I yield back.

Thank you.

[The prepared statement of Senator Gillibrand follows:]

Senator Barrasso. Thank you very much, Senator Gillibrand.

Also along the same lines, Senator Inhofe is unable to be here today. I want to thank him for his support of S. 3303. I ask unanimous consent to enter his statement for today's hearing into the record.

Without objection, it will be entered.

[The prepared statement of Senator Inhofe follows:]

Senator Barrasso. Additionally, there was reference to the Western Governors Association and their comments. We did visit with Todd Parfitt who is the Director of the Wyoming Department of Environmental Quality regarding this piece of legislation. He said he "recognizes the State's role in protecting water quality under the principles of cooperative federalism," which is what the Western Governors Association has said.

He goes on to say "This bill does not erode States' ability to protect water quality under Section 401."

With that, I would like to welcome my friend, Senator Daines, to the committee. Senator Daines, we are very grateful that you joined us. Thank you for your partnership in introducing the Water Quality Certification Improvement Act.

We welcome you to discuss the bill and introduce Mr. CJ Stewart who hails from Montana.

STATEMENT OF THE HONORABLE STEVE DAINES, A UNITED STATES SENATOR
FROM THE STATE OF MONTANA

Senator Daines. Chairman Barrasso and Senator Gillibrand, thank you for inviting me here today to introduce a very special guest from Montana.

CJ Stewart joins us today from the Crow Tribe in Montana. He is also Senator CJ Stewart. I knew CJ when he was a Senator who served eight years as a Senator for the Crow Nation legislative branch.

He is an active and strong voice in his community and currently leads the National Tribal Energy Association. Mr. Stewart brings a very unique voice from Indian Country to the table during these discussions.

For perspective, on the Crow Reservation, the unemployment rate there is around 70 percent. When you engage with the people of the Crow Nation, they are pleading with us here in Washington to allow them to develop their natural resources and to provide opportunities and jobs for their people.

These jobs related to coal are critical. The unemployment rate has gone up because they have lost some of these critical coal mining jobs.

For those who are skeptics about what happens when we mine coal in Montana, I would invite you to come out sometime and see what reclamation looks like, how literally they restore the

grounds with the original topography and grasslands. We are now seeing elk moving into these reclaimed areas, as well as mule deer, sage grouse and other native species.

As a member of the Crow Tribe, Mr. Stewart has firsthand experience in how Section 401 of the Clean Water Act has been abused and has hurt our communities throughout Montana.

Speaking of clean water, literally a week ago today at this very moment, I had a fly rod in my hand with my wife, Cindy, and our two dogs far in the Beartooth Absaroka wilderness of Montana. We hiked in about 12 miles.

There was not a boot print or a trail where we were, fishing for Yellowstone Cutthroat Trout with a little elk hair cactus.

I point that out because it is called the Beartooth Absaroka Wilderness. Absaroka is actually a word that ties back to the Crow Tribe. They are called the Apsaalooke people. We derive Absaroka from that. Today, if you look on a map, you will see the Beartooth Absaroka Wilderness. These were the original grounds of the Apsaalooke people.

I discussed this with CJ earlier, this beautiful, pristine, clean water related to the Absaroka or the Apsaalooke. They are called people of the large beak bird or the Crow Tribe, when you do a little translation. They know all about clean water, they cherish it.

Mr. Stewart has firsthand experience of how Section 401 of the Clean Water Act has been abused and hurt communities. The Crow Tribe is home to and surrounded by large coal deposits and the community has fought hard to bring high-paying energy jobs to their members.

This coal can be responsibly mined and can be responsibly exported to our Allies in the Asian Pacific. As the Chairman mentioned, Powder River Basin coal is Montana coal.

By the way, Montana has more recoverable coal than any State in the United States. You do not think about Montana as being a coal State. For those who do not understand our State, we are number one in coal reserves in the Nation.

The reason our coal makes sense is because as we see what is going on in Asia, they are going to burn the coal but Montana coal, Wyoming coal, Powder River Basin coal is more environmentally sound and has a lower sulfur content. It is the right thing to do as relates to global stewardship of the environment versus Indonesian coal and Australian coal.

Japan wants our coal. Montana and the Crow Tribe can produce that coal. Unfortunately, while we are blessed with mountains and prairies, Montana does not have a coastline. We, therefore, depend on other States to get our resources to market.

That is why it is so important that we are having this

hearing here today on legislation that Chairman Barrasso, other members of this committee, and I introduced. The Water Quality Certification Improvement Act simply clarifies that Section 401 certification should be based on clean water standards.

As part of the Clean Water Act, Section 401 should apply to clean water, not rail traffic or other unrelated issues, and, more importantly, should not be used for political reasons. I believe this is an important bill that will continue to give States a voice while also making sure certificates are based on the best available science.

I look forward to hearing more from this committee and my friend and Montana Native. Let me say there are Montana natives and then there are Montana Natives. That is my friend, CJ Stewart.

Again, thank you, Chairman Barrasso, for allowing me to be here today. Thank you for bringing Mr. Stewart to Washington, D.C. to discuss the important impacts to our State and, importantly, our tribal communities.

[The prepared statement of Senator Daines follows:]

Senator Barrasso. Thank you, so much, Senator Daines. You are welcome to join us for as long as you are able. I know you have additional obligations on your schedule but we appreciate you being here with us today.

I would now invite all of the witnesses to please join us at the witness table. First, we have Mr. CJ Stewart, Board Director of the National Tribal Energy Association. We also have Mr. Brent Booker, Secretary-Treasurer of the North America's Building Trades Unions and Mr. Anthony Willardson, Executive Director of the Western States Water Council.

We want to welcome all the witnesses and remind you that your full written testimony will be made a part of the original, official hearing record today. We would ask that you please keep your statements to five minutes so that we have time for questions. We have quite a number of Senators here interested in hearing what you have to say and asking questions.

I look forward to hearing your testimony beginning with Mr. Stewart. Mr. Stewart, please proceed.

STATEMENT OF CJ STEWART, BOARD DIRECTOR, NATIONAL TRIBAL ENERGY ASSOCIATION

Mr. Stewart. Thank you, Chairman Barrasso, Ranking Member Carper, and members of the Environment and Public Works Committee.

I appreciate the invitation and the opportunity to testify before this committee on examining implementation of Clean Water Act, Section 401 and your accompanying legislation.

My name is CJ Stewart. I am a Crow Tribal member, a board member and co-founder of the National Tribal Energy Association, NTEA. NTEA advocates for both tribes and industry to promote healthy and sustainable energy economies on Native American lands.

I am also currently in private practice as an energy consultant for Indian energy development and infrastructure. I previously served two terms as a Senator for the Crow Legislative Branch and as Chairman of the Crow Natural Resource & Infrastructure Development Committees from 2007 through 2015.

In 2016, at the request of Chairman Darrin Old Coyote, 21st Chairman of the Crow Nation, I held the position of Crow Nation Energy Advisor and Legislative Liaison. During this time, I was also appointed as Vice Chairman of Congressman Ryan Zinke's Natural Resource Advisory Committee.

Lastly, I worked for 10 years as a union coal miner hauling

Crow coal and was the first Native American to be appointed to serve on the Montana Coal Board, where I was voted Vice Chairman.

Tribal economies face many obstacles to success, and currently the economy of the Crow Tribe is facing a critical crisis. While we are blessed with untold mineral wealth in oil, coal, and gas on the Crow reservation, regulatory roadblocks and political crises force us to languish in poverty.

The tribe currently has an unemployment rate of 70 percent or more and hopelessness is beginning to cast a shadow where there was once hope for a vibrant and prosperous future. Imagine having a trillion dollars in mineral wealth under your feet and yet your people are starving and destitute before you. It is a cruel nightmare that could be avoided if not for the Clean Water Act being weaponized against the Crow Tribal resource economy and the Crow people and culture.

Clean Water Act Section 401 was intended to provide States with a way to apply clean water quality protections to federally-permitted activities. However, certain States have misused the process to block Crow economic projects for political reasons that have nothing to do with water quality.

These States have hijacked the 401 certification process and used it as a means to interfere with tribal and international trade policy in violation of the Commerce Clause

of the U.S. Constitution, including and specifically the Indian Commerce Clause.

The economic prosperity of tribal communities throughout the Country is dependent on the flow of goods to port facilities that is unencumbered by physical, commercial, or political roadblocks. Surely the founding fathers saw the necessity of the Indian Commerce Clause for tribal Nations against hostile and racist actors, be they private or public, who bore animosity against Native peoples.

Importantly, these laws were put in place to protect sovereign tribal economic activity, but recent and ongoing activity on the part of certain coastal States severely infringes on the rights of States and tribes without direct access to export facilities to engage in interstate commerce.

The Crow Nation is deeply respectful of the need for States and tribes to be able to protect their own waters from projects that would degrade water quality and infringe upon water use. We are also needful of the same respect in terms of our commercial endeavors including our sovereign resource development and commercialization.

Unlike these aforementioned hostile actors who are so detrimental to the quality of life for the Crow people, we seek no power over or ill will toward them. We instead seek a legislative remedy that maintains equal and fair application of

the law.

The Water Quality Certification Improvement Act of 2018 is such a legislative remedy and does not inhibit the ability of States and tribes to enforce their water quality laws. Rather, it provides necessary transparency and clarity to the 401 process, while preserving the central role of tribes and States in protecting local waterways.

The U.S. holds more of the world's coal reserves than any other Country, and the coal mined by the Crow Nation is preferred by high efficiency, low emission power plants that are in operation and being built around the world. However, even though our coal resources provide a critical component of U.S. export trade, our ability to get our coal to fast-growing Asian markets is being hindered by States on the West Coast who continue to refuse to grant needed approvals to build state-of-the-art export facilities for political, not water quality, reasons.

The Water Quality Certification Improvement Act of 2018 ensures that water quality certifications focus on their intended environmental purpose, the protection of local water bodies potentially impacted by federally-licensed activities. It will therefore protect the health of local communities while simultaneously promoting the ability of tribes and land-locked States to exercise their right to engage in interstate commerce

and grow the economy.

[The prepared statement of Mr. Stewart follows:]

Senator Barrasso. Mr. Stewart, thanks so much for being with us today. Thank you very much for sharing your testimony. After we hear from Mr. Booker, we will come back with some additional questions.

Next, Mr. Booker, thank you very much for being with us today. We appreciate that you are here to testify.

STATEMENT OF BRENT BOOKER, SECRETARY-TREASURER, NORTH AMERICA'S
BUILDING TRADES UNIONS

Mr. Booker. Thank you, Mr. Chairman, Senator Carper and Senator Merkley for your leadership and continued efforts to address permitting reform.

As Secretary Treasurer of North America's Building Trades Unions, and on behalf of the three million skilled construction workers I represent, thank you for allowing me to share with you the impacts of project delays on the hard-working men and women who build and maintain America's energy, water, and transportation infrastructure.

NABTU is dedicated to creating economic security and employment opportunities for North American construction workers by safeguarding wage and benefits standards, promoting responsible private capital investments, investing in renown apprenticeship and training, and creating pathways to the middle class for women, communities of color and military veterans in the construction industry.

Because of these efforts, and others, collectively amongst all 14 NABTU affiliates, more than \$1 billion dollars is spent annually on apprenticeship training at 1,600 domestic training centers. We now boast 135 apprenticeship programs to ready students for the academic and real-world challenges of being a union apprentice.

North America's Building Trades Unions support responsible regulations that protect the environment, public health and worker safety. We believe they are critical to responsible infrastructure development that lasts for decades and allows for future generations to use these invaluable assets.

What is concerning, however, is the tactic of project opponents using a constant stream of endless lawsuits to delay a project because they cannot defeat a project on the merits of the project itself. When projects are tied up or delayed because of court proceedings, not only are critical American infrastructure projects stalled, but also our members are not working, they are not putting food on the table, they are not providing for their families and they are not participating and contributing to the local economy.

In the Northeast region, this is the reality. Union construction workers stand ready to build necessary pipeline infrastructure to deliver Marcellus Shale natural gas to utilities, industry, critical infrastructure like our schools and hospitals, and most importantly, to our consumers. The region's notoriously high energy prices have met a perfect storm in the form of inadequate natural gas infrastructure being coupled with the delay of the Constitution and Northern Access Pipeline projects.

ISO New England recently highlighted that four gigawatts of

natural gas-fired generation capacity, 24 percent of the region's gas-fired net winter capacity, was at risk of not being able to get fuel when needed. A safe, modern, and affordable solution, the Constitution pipeline, was delayed from being built after already receiving FERC approval. This permit denial is still delaying about 2,400 direct and indirect jobs from the pipeline construction generating \$130 million in labor income and economic activity for the region.

The decision continues to cost local governments approximately \$13 million in annual property tax revenue. Unfortunately, the Clean Water Act Section 401 permitting process has resulted in needless uncertainty. This can stymie approval for years, or worse, halt a half-completed construction project in its tracks.

By some estimates, a six-year delay in starting construction on public works, including the effects of unnecessary pollution and prolonged inefficiencies, costs the Nation over \$3.7 trillion. Let me be clear. When lawsuits aimed squarely at killing projects are brought forth for politically-motivated reasons, it hinders our ability to create jobs and prepare the next generation of construction workers for tomorrow.

These unnecessary delays thwart needed infrastructure progress, and impede NABTU members from working and earning a

paycheck. We must have regulatory certainty and predictability.

North America's Building Trades Unions strongly supported the FAST-41 reforms because they lead us toward a path of standardization and finality in the permitting process. We have supported the thoughtful steps taken to reform the system while maintaining the underlying regulations that protect the health and safety of our members on the jobsite and the environmental and human impacts of projects on communities across the Country.

We will continue to be engaged with Congress and federal agencies as sensible regulatory reforms are identified and implemented. Case in point, the reforms made by S. 3303 requiring States to tell an applicant whether they have all the materials needed to process a certification is commonsense.

The clarification that the scope of a Section 401 review is limited to only water quality impacts needs no explanation. We support reforms that reign in the legal challenges while thoughtfully protecting the environment, the public, and worker safety on the job.

On behalf of NABTU, our affiliates, and our 3 million members, thank you for the opportunity to testify. I look forward to any questions you may have.

[The prepared statement of Mr. Booker follows:]

Senator Barrasso. Thank you very much, Mr. Booker, as well as Mr. Stewart. We appreciate you being here. We will see if Mr. Willardson is able to arrive.

If I could, I will start with some questions for Mr. Stewart. In your testimony, you talked about some of the real world impacts from not being able to use the tremendous natural resources that we have in America, specifically in Indian Country. The Seattle Times newspaper reported that the Millennium Bulk Terminal project would bring \$680 million in investments to Cowlitz County alone, the Washington county where the terminal project would be located.

What has the delay of this bulk terminal project done to the hardworking people in Indian Country and in States outside of Washington State such as your own?

Mr. Stewart. First of all, Mr. Chairman, I appreciate the question.

The delay of the permitting of the Millennium Bulk Terminal has cost loss of federal, State and tribal mineral taxes, caused the loss of countless high-paying and highly-skilled jobs which pay income and sales taxes in Montana, Wyoming, Colorado, Utah and other western States.

It has caused the loss of new equipment services for the ongoing management and expansion of mines which in turn have caused more losses in taxes at all levels. It has had a direct

impact on the Crow Nation which has lost the opportunity to mine, sell and tax millions of dollars of coal over the years which has negatively impacted tribal education, housing, health and other services, but more importantly, jobs. Mr. Chairman, it is jobs.

Senator Barrasso. Thank you very much, Mr. Stewart.

Mr. Booker, during the cold snap last winter when Massachusetts imported liquefied natural gas from Russia to meet its energy needs, Massachusetts took a dramatic step because like other New England States, it has insufficient pipeline capacity to import gas from nearby States like Pennsylvania or trying to move it there. They just do not have the pipeline capacity to do it.

The Boston Globe wrote, "The environmental toll this year was eye-popping. Greenhouse gas pollution exploded during this winter's cold snap, leaving generators to burn 2 million barrels of oil." Because they could not get natural gas through the pipeline, they went to oil.

The lack of pipeline capacity is causing real harm to the environment as well as to energy security, as well as to the economy. Could you talk a bit about how Section 401 has delayed gas pipeline projects such as the Constitution Pipeline in New York from moving forward? Are you concerned about the negative environmental impacts?

Mr. Booker. Yes, thank you for the question, Mr. Chairman.

For us, what you just described is what we are trying to prevent, importing natural gas from Russia or from other places outside of this Country to keep our houses warm and keep our businesses open and running.

When you have impacts and people using Section 401 not for what it is intended for, delaying these critical infrastructures and pipelines, the immediate impact, as Mr. Stewart mentioned, is the jobs and for me, the people I represent to go to work.

The further consequence is the environmental impact of burning heating oil rather than burning clean, natural gas which is a domestic resource which we are burying the market not only in this Country but globally through LNG exports.

By having these delays and not having the needed infrastructure we have or that we need in the Northeast, we are further damaging the environment while we are not creating jobs that are absolutely needed in the Northeast and all over the Country.

Senator Barrasso. Mr. Stewart, when the State of Washington denied the water quality certification for the Millennium Bulk Project, it claimed there would be environmental harm, but the State of Washington's own consultant concluded there would be a net environmental benefit in terms of emissions.

The consultant found that the mining and export of coal in America for use in Asia through the terminal would reduce greenhouse gas emissions globally over time. I would like to introduce a report into the record of today's hearing. It is a substantive report. Without objection, it will be submitted.

[The referenced information follows:]

Senator Barrasso. Can you talk a bit about how the export of American energy can actually improve, not reduce, environmental protection?

Mr. Stewart. In general, when you talk about how it will improve the economy, look at Native America. We are the most regulated ethnic body on the face of God's green earth. We live in our areas for all perpetuity and we are going to continue to live there. We are not going to allow pollution to be something that will ruin our land, water and air.

When we are developing our resources, we make sure that our resources are developed in a responsible manner. I would rather have a better regulated product here in the United States than have to import unregulated product coming from someplace else.

With all due respect, Mr. Chairman, when you are closing the door on our ability to send out our product, what doors are the NGOs and States leaving open?

Senator Barrasso. Thank you, Mr. Stewart.

I would like to welcome Mr. Anthony Willardson who has joined us. We are delighted to have you. He is Executive Director of the Western States Water Council. If it is appropriate, at this time, I would like to hear your testimony.

STATEMENT OF ANTHONY WILLARDSON, EXECUTIVE DIRECTOR, WESTERN
STATES WATER COUNCIL

Mr. Willardson. Thank you, Senator. I apologize for being tardy. I had a misunderstanding of the beginning of the hearing.

We want to thank you, Mr. Chairman, Senator Carper and also the other members of the committee for this opportunity to testify on the importance of the Clean Water Act Section 401 Certification Authority to the States.

We also appreciate your leadership on issues of water and public works as well as balancing environmental and economic interests, as well as balancing two federal policies and programs and the role of our States in our federalist system.

Federal agencies need to work together with the States. I would like to mention that we have a Western Federal Agencies Support Team with 12 agencies that work with the council on water policy issues. Our current, new federal liaison will be John D'Antonio with the Army Corps of Engineers.

I would also like to mention that Congress has, in the past, recognized and deferred to the primary authority of the States to allocate their water resources as well as to appropriate, develop, conserve and protect those resources, both surface and in-ground water, as well as water quality instream flows and protect aquatic species.

Section 8 of the Reclamation Act, Section 10 of the Federal Power Act, Section 101(g) and Section 101(b) as well as Section 401 all speak to State authorities.

The council supports the appropriate streamlining of permitting and processes, as well as the coordination of environmental and regulatory reviews to eliminate duplication where we can and reduce costs as well as reducing the cost of compliance, construction and ensure timely permitting processes.

The West enjoys a diverse and abundant stock of natural, renewable and non-renewable energy resources but water is often scarce. The Council has specifically supported federal legislative and administrative actions to authorize and implement reasonable hydropower projects. That is the area where we have the most experience with Section 401 consistent with State law and regulatory authorities.

The Federal Power Act, Section 27, declares that "Nothing herein contained shall be construed as affecting or intending to affect or in any way interfere with the laws of the respective States related to the control, appropriation, use or distribution of water." In California v. FERC, the State claimed authority to supplement minimum stream flows required by FERC. As I am sure you are aware, 49 States signed an amicus brief before the Supreme Court. We lost 9 to 0 in that case.

It was only five years later that in a case in the State of

Washington over 401 that the Supreme Court restored authority to the States to mandate minimum bypass flows. That has been particularly important to the States since then.

At the time, the Supreme Court mentioned that Congress could change what they had done. We have supported legislation to assure that all applicants for hydropower licenses comply with States' substantive and procedural law, and that this was the original intent of Congress.

As Congress again considered legislation, the Supreme Court made changes to the way Section 401 has been applied. Again, in 2006, the Court recognized that 401 certification authority applied to more than just discharges under the Clean Water Act.

As I am sure you know, Section 101(g) was sponsored by Senator Malcolm Wallop of Wyoming who was a champion of regulatory efficiency and State water rights. In 2004, the council conducted a survey looking at the processes our States use for issuing 401 certifications and what, if anything, may amount to delays. The consensus of those States was that certification alone is not an obstacle to timely federal permitting and, in most cases the majority of requests were processed within 40 to 90 days.

The delays were typically due to the submission of an incomplete application, not responding to the State's request for more information, incomplete study requirements or failing

to comment on proposed project conditions. Substantive changes can happen.

We appreciate the opportunity to be here to testify on this issue and look forward to working with you, Senator, as Chair, and other members of the committee. Improvements can be made. We are willing to work with you on that.

I would suggest one first step is to consult with the States early and often. I think some of those entities have already expressed their opinion here as far as the Coalition of Western Governors, attorney generals, legislators and other State and wetland agencies.

Thank you.

[The prepared statement of Mr. Willardson follows:]

Senator Barrasso. Thank you very much, Mr. Willardson. We are grateful you had the opportunity to testify today. We appreciate your words.

I have one question. Washington State cited reasons unrelated to water when it denied the water quality certification for the Millennium Bulk Terminal project. Do you agree Section 401 is about water quality, not about air emissions, noise or other non-water related impacts?

Mr. Willardson. Section 401 is about water quality and not the other impacts. My understanding of that decision is that there were a number of other considerations included that came from the environmental impact statement.

It was denied with prejudice given they thought the impacts on water quality were clear and could not be mitigated.

Senator Barrasso. Thank you, Mr. Willardson.

Senator Merkley.

Senator Merkley. Thank you, Mr. Chairman. Thank you all for your testimony.

On behalf of Ranking Member Carper, who is not here, I ask unanimous consent to submit letters and other materials for the record, including opposition letters from the following: the State of Maryland, Office of the Attorney General; the Environmental Council of the States; the Association of Clean Water Administrators; the Association of State Wetland Managers;

a 139-member Coalition of Environmental River Keeper Groups; and the State of Washington Department of Ecology.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Merkley. Thank you.

Mr. Willardson, I understand that projects are often denied certification due to the lack of communication with key stakeholders. You mentioned incomplete applications being submitted or incomplete responses to requests for information. Were you using that as the primary reason there are delays in the process?

Mr. Willardson. Only one of the reasons. From a State perspective, there are challenges related to staffing and staffing turnover. States have made adjustments. I know of at least one State that now assigns two people to work on any particular FERC licensing or relicensing given the length of time and the potential for turnover.

Senator Merkley. At least a significant share? I thought perhaps from your testimony that the majority of the 401 certification delays were the result of incomplete applications being submitted? Is that correct or incorrect?

Mr. Willardson. That is correct. Where States have not been able to act in a timely manner, it is largely because the information has been received or not received.

Senator Merkley. That is something that certainly can be addressed within the existing law?

Mr. Willardson. Yes. I think another area of interest obviously is the definition of one certification is requested.

In the past, States were disappointed that the Federal Energy Regulatory Commission, on a hydropower issue, unilaterally tolled the time for the State to act in over 200 projects.

Since then, States have either denied up front a project that came in with an incomplete application as opposed to waiting until the end of the one year tolling period currently available under the law.

Senator Merkley. To expedite the process. You mentioned hydropower and that is a big deal in my State. We have a lot of dams. We have dams coming out that no longer serve existing purposes; that enhance fish passage; dams going in or hydropower going in on existing dams; electric generation; fisheries; recreation, many things that affect the local economy that people care a great deal about.

Are you aware of any hydropower projects in Oregon that have had significant problems with their 401 certifications?

Mr. Willardson. I am not.

Senator Merkley. The types of things that Oregon has addressed to complement the federal regulation have been things like protections for wetlands, shoreline regulation, water temperature, acidity, turbidity, levels of instream flow which can be essential downstream both to temperature, fish passage and water being drawn for drinking water, sediment excavation deposit, bacteria levels, dissolved oxygen and dissolved

nitrogen, algae growth, chemical and waste management, data collection, public reporting transparency which is very important to the stakeholders in our State so we really know what is going on, and instream water construction procedures that affect all of the above.

Are those appropriate types of things for the public to be concerned about in terms of recreation activities, the health of the streams, fish passage and so forth?

Mr. Willardson. Yes, there are many components related to water quality and protecting water quality more than just discharges under Section 402. Many of the States deal with those under not only the federal law, but, as the law currently allows, under applicable State law. Oregon is one of the States that has its own federal hydropower licensing process.

Senator Merkley. When we talk about discharge, is it clear that, as rewritten, discharge would encompass the impact on discharge during the process of construction as well as upon completion of the project?

Mr. Willardson. I think in addition to just discharge, it does take many forms, the alteration of the bed and banks obviously are included, but the bypass flows themselves. As I said, most of our experience has been with bypass flows and the Federal Energy Regulatory Commission.

Maintaining those flows is important to water quality

standards, total maximum daily loads and other components of the Act. Yes, there are many components.

Senator Merkley. Many components that might not be directly covered by just the word "discharge" or at least there would be a huge amount of lawsuits and adjudication to try to determine what discharge and how broad that is?

Mr. Willardson. It would not be covered, in my opinion, by discharge.

Senator Merkley. Thank you.

Senator Barrasso. Senator Capito.

Senator Capito. Thank you, Mr. Chairman. I want to thank the Chairman for his willingness to work with me in developing this legislation.

I thank the witnesses for being here today.

Mr. Stewart, I come from West Virginia, a proud, coal-mining State. I want to thank you for your years of coal mining. I know it is a tough job. I appreciate you coming today to give us your perspective.

I notice you are a member of the union, the MWA, I would suppose?

Mr. Stewart. It was Local 400 in Montana.

Senator Capito. They are good friends of mine.

Mr. Stewart. IUOE.

Senator Capito. Yes, thank you.

I would like to talk a little bit about some of the testimony we have already had today. Mr. Booker, you mentioned more than once in your testimony the importance of certainty around the regulatory process.

In West Virginia, this has been a challenge for us. We have three pipelines that have been permitted that are now on hold, not through the 401 process, but with FERC. You might have been following that.

I am going to start with that question. What does that uncertainty do to your members and membership? It also has to have some sort of residual impact as to your apprenticeships and who wants to get into the business of building and constructing when you don't know if you are going to be coming or going with the uncertainty of permitting and the regulatory.

Encompassing the 401 uncertainty, how are you seeing this play out in terms of these pipelines we are seeing put on hold right now?

Mr. Booker. The simple answer is people are not going to work. They are not earning a paycheck, are not able to provide for their families, and not able to support the local economy and participate in the local economy.

Specific to your question on training, we pride ourselves in our training. We invest a billion dollars a year in training. We have training centers in every State of this

Country, multiples in every State of this Country.

We also have apprenticeship readiness programs where we try to appeal to under-served communities, whether it is veterans through our Helmets to Hard Hats Programs, women, people of color, to bring them into the construction industry. It is not an easy career. You have the ebbs and flows.

When you take away the predictability of the permitting process, it adds more unpredictability or more uncertainty to that. That means people are not going to work every day. Our training is based on working through the week, and taking classes at night as you graduate your levels of apprenticeship.

If you are not working, you are not getting enough hours to graduate your apprenticeship, gain the skills you need to be a journeyman or whatever craft you come from. It has a devastating effect on the growth of the future workforce for us and to be able to keep our training centers operating.

Senator Capito. Absolutely.

Mr. Stewart, I feel this daily living in a State like ours that has quite a bit of coal mining, we live there, we breathe the air, we drink the water, we fish, we recreate in our areas, as you mentioned in your testimony, where you live. In my view, if there are any people more environmentally sensitive to their area, it is the people who live there. Striking that balance between working, the economy and the environment where you live,

breathe and raise your family and your children go to school, I think is difficult.

If you could speak a little bit to the frustration, as you did in your opening statement, you feel that you cannot get out your message to say how impactful this is to you all and also, how deeply you feel about the environment you live in and are surrounded by.

Mr. Stewart. I appreciate the question, Senator Capito.

Coal mining is a brotherhood. It takes a special breed to be in the middle of the night sitting on a piece of equipment in the middle of nowhere on the mine site eating out of a box at lunchtime or in the middle of the day, when it is ice cold outside or else in burning heat.

You are sitting there running a shift whether on a dozer, truck or a piece of equipment, a dragline, whatever the case, but you are alone. You have a lot to think about. I also ran the reclamation dozer so I do a lot of the reclamation.

Senator Capito. Which is the environmental restoration of mining.

Mr. Stewart. Doing the reclamation side of areas of the mine. Coming from my previous life as an equipment operator when I was first taken out there and asked to do an interview to apply for the position, I did not know where it started or where it ended. The reclamation was so great, it was beautiful.

I say it is almost kind of like a zoo because you see the best looking out there, you see the best looking deer. I don't care what anybody says, there are deer right there on the rail spur eating the grass right next to the rail.

I lived by the railroad tracks, maybe half a mile from the railroad next to I-90, for 44 years, all my life. It is a brotherhood. First and foremost, we help each other so we can come home safe so we are able to provide for our families and we take care of each other.

Senator Capito. Thank you.

Senator Barrasso. Thank you, Senator Capito.

Senator Van Hollen.

Senator Van Hollen. Thank you, Mr. Chairman.

Welcome to all the witnesses.

A few weeks ago we had a hearing on legislation dealing with the Endangered Species Act. That legislation proposed to give the States more authority on the grounds that the States were in a better position to understand some of the local concerns. Now we have a piece of legislation that wants to take away authority from States when it comes to making some of these decisions.

There has been a lot of focus on the pipeline issue. Also, this legislation will have a negative impact in many other scenarios. For example, with respect to the Chesapeake Bay and

protecting the waters that flow into the Chesapeake Bay, there is a dam on the Susquehanna River called the Conowingo Dam which is run by Exelon.

As I read this legislation, it would prohibit the State of Maryland from doing something we have done for a very long time which is, as part of that permitting process for the dam under 401 authority, required Exelon to provide, for example, fish passage because the dam interrupts fish migration up the river.

That has never been an issue. However, this legislation would take away the authority of the State of Maryland or other States to make that a condition. I would like to have all of your views on this starting with Mr. Willardson.

Mr. Willardson. I think it would definitely reduce the State's authority to require minimum bypass flows or require releases from the dam to protect downstream water quality as well as aquatic species.

As far as the fish passage, that would be more related to the Interior and those authorities where they can mandate, under the Federal Power Act, fish passage facilities. It would definitely reduce State authorities.

Senator Van Hollen. With respect to sediment flow, another issue is when you put up a dam; it can have an impact on sediment which obviously can have an effect on waters as they go into the Chesapeake Bay.

Sometimes it captures and traps sediment, but when you have major storms, it has this overflow impact. As I read this, it would also take away the authority of a State to tie permitting for a dam project, for example, to the impact on sediment flows. Is that how you read it?

Mr. Willardson. It obviously would limit it to discharges and however that might be defined in the future. There are many components besides discharges that impact water quality. We have been very strong proponents of the States' authority to regulate their water, both quantity and quality to meet their goals.

Senator Van Hollen. To the other gentlemen, you focused your comments on pipelines and I understand that testimony. It is not your intention, is it, to deprive States of the authority to require, for example, fish passage mechanisms as part of permitting for hydroelectric projects like a dam, is it?

Mr. Booker. No, that is correct. We support regulation but I think the current way the system has been, my testimony speaking specifically to the pipelines and Mr. Stewart's with the coal export, is that has been abused and misused to go beyond that which has caused these delays.

Senator Van Hollen. We can have an argument on the merits of what both you gentlemen talked about, but my concern is, as I read it, Mr. Chairman, that this is much broader in scope and

impact and would deprive States of tools they have been using for a very long time or may reasonably want to use when it comes to things like sediment flows and things like that around the Conowingo Dam.

I look forward to continuing the conversation with all of you and the Chairman on that. Thank you.

Senator Barrasso. Thank you very much, Senator Van Hollen.

My view on this is that the permitting process now has been weaponized to pick winners and losers. The State of Washington is acting in this case like the Secretary of State, the Secretary of Commerce, and the U.S. Trade Rep in trying to decide single-handedly what our Country is permitted to export.

As a result that there are six Attorney Generals from Wyoming, Kansas, Montana, Nebraska, South Dakota, Utah who are supporting the Millennium Bulk Project in litigation against the State of Washington. The State is preventing important interstate commerce, violation of the Constitution.

I ask unanimous consent to enter their brief into the record.

[The referenced information follows:]

Senator Barrasso. Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

Mr. Stewart, thank you for your testimony this morning. I appreciate you appearing before our committee and sharing your experience about the challenges facing our States and constituents as a result of that cumbersome red tape and the needless delays we see under Section 401 and that process. It is due to reasons unrelated to water quality concerns.

Nebraska is the only triple land-locked State in the Nation. With an ag economy of \$21.5 billion annually and a population of 1.9 million people, you can see how important it is for my State to export our high quality agriculture products around the globe.

To do so, Nebraska producers depend on ports. We depend on those ports located along our Nation's coastlines. However, when States with antigrowth agendas can unilaterally determine what commodities get to be exported as the result of project delays that are unrelated to water quality issues that raises concerns. Today, it is coal. Tomorrow, it could be corn or soy beans.

Mr. Stewart, what are the potential economic implications States, communities and families could face as a result of important export terminal project delays?

Mr. Stewart. Thank you, Senator Fischer.

First of all, when you bring it out like that, I thought he was going to give me a chance to answer him but I want to answer you as well.

First of all, I would be very alarmed. I would be very alarmed that first of all, they are coming after coal. Yes, tomorrow, it might be fish. Tomorrow it might be a different kind of fish. Tomorrow it might be GMOs, or might be non-electric cars. Whatever may be the case, whatever is the flavor of the month, someone is going to try to go after that.

When you talk about States' rights, I have no problem. I am not trying to interfere with States' rights. I am not trying to interfere with those areas, but you have to recognize that under States' rights, under the United States Constitution, there is something called the Indian Commerce Clause. There is something called equal trade, free trade, all these terms we freely throw around when it works to our benefit.

Like the Chairman said, we cannot pick winners and losers. We should not pick winners and losers. We should allow people and groups to work with each other to try to establish this economy.

In the U.S. Constitution and as a United States citizen, but first and foremost as a citizen of the Crow Nation, we have a phrase in the United States Constitution that says "pursuit of happiness." In Indian Country, that is called self-

determination. That is a federal act.

When we are being stymied or impeded, our ability to move our product through the ports or even to the domestic markets because as a Nation within a Nation, the Crow Nation has always been exporting. Now they are going to try to tell us we cannot send our product out of our Nation or cannot provide. I am going to bring it up again. If you are going to close the door, what doors are they leaving open?

I am not trying to blame anyone, I am not trying to point fingers but this is America. As a first American, I would be very alarmed. Right now, we have 70 percent unemployment. Do they care? Yes, we care about endangered species but there are only 14,000 Crows left. I believe we are endangered as well.

When you talk about 3 percent of the population in the United States and 60 percent of this Nation's good resources lie in Indian Country and only 88 percent of those resources have been tapped, only 12 percent of Native Americans has been able to tap their resources, there is something wrong with that picture. There are impediments in our way. There are 49 steps that stand in our way and four primary agencies. When we talk about coal, there is a fifth with OSM.

When we talk about these impediments and the 49 steps that we, as Native Americans have to go through as first Americans, we should be the first ones out of the gate. We have the most

resources but we are the last ones at the dinner table.

With that much in resources we should be sitting at the table. We should have a place at the table. We should have our name at the table. We should not be giving the right to the States to break the law, to impede other nations from trying to feed their people. That is wrong. Not only is it breaking the law, but it is morally wrong. We need the ability to establish our jobs and have jobs, 70 percent.

To the good Senator, I appreciate your question.

Senator Fischer. Thank you for a very wonderful answer to why we must have free commerce in this Country. I think you expressed it beautifully.

Thank you.

Senator Barrasso. Thank you, Senator Fischer.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chairman.

Mr. Stewart, thank you for being here. I am going to echo the Senator from Nebraska's thoughts as well. The fact that you have 14,000 members of your Nation and are endangered as well is a very powerful statement. That is extremely powerful.

So many of the questions I had have already been asked. I would like you to take this opportunity to visit with us a bit more. Understanding your presence here today really does suggest there are some important State and tribal interests

being hurt when the Section 401 authority is abused. We appreciate you taking the time to join us today.

In a broad statement, do you think other States and tribes, those without coastlines, have reason to be concerned about what is happening in your particular situation as well? Do you think other tribes or States have a reason to be concerned, witnessing what has happened with your Nation?

Mr. Stewart. Yes. In fact, we have friends, brothers and sisters, friends and families from other tribes. If they are not watching this, they should be. In fact, I know the tribes that are watching these areas, for some reason the Crows always are at the forefront of a lot of these situations.

That is because, as I stated, the U.S. Constitution says the "pursuit of happiness." We are just trying to determine ourselves, trying to extract our resources. When you own 10 percent of the Nation's coal reserves and 3 percent of the world's, only averaging 3 million tons of coal a year, roughly 125 workers out of 14,000 Crows, that is pretty tough, especially when we are not trying to break the obligations of our treaties because we are getting nothing for free. We prepaid in the giving and ceding of our lands ahead of time with our treaties.

When we have a general fund that is funded at 66 percent from our own resources, that our own people have mined and sent

out to domestic markets, wanting to now send them out to export markets, talking with other countries, our allies, and wanting to expound on our opportunities in those areas and being told there is another step you are going to have to cross, another bridge you are going to have to cross, why is that?

In Indian Country, when they tell us to abide by a regulation or policy, we have to. We do not have the ability or luxury to move the goalpost because, guess what, that is breaking the law. When you establish 401 as a platform for other reasons and political agendas, not realizing you are messing with people's lives, I have to say something.

Senator Ernst. Yes, and I am glad you have.

Mr. Stewart. I have come out of my own pocket to be here. I am sitting right here speaking from the heart.

Senator Ernst. We are very glad for that.

You have done a very good job explaining the difficulties your Nation is facing right now. If we were to be forward looking and if Section 401 had been approved and you were moving forward with exporting your coal and your resources not only to the domestic market but to foreign markets as well, could you describe what the situation would be like then for your Nation?

Mr. Stewart. At the time when I was on the council, I participated in a decision where we reached out to Harvard for the Indian coal production tax credits but at that time.

Harvard did the study we asked them to do and paid them to do. Right or wrong, we said, put together a study and let us look at the economic ripple that we provide for the region.

We had that study done and looked at it. There were the direct benefits and indirect benefits and as it ripples throughout the region, at a good year, we were averaging 5.5 million tons at our coal mine and about \$21 million to our tribal coffers, roughly 66 percent of our general fund budget.

When we did that study, it showed in the hundreds of billions just from that one coal mine how it affected the region. To answer your question, Senator Ernst, if we get the ability, under the Indian commerce clause, the only ones that can regulate commerce between tribes is Congress. States cannot impede upon that.

When we talk about these issues trying to move forward in this arena and be a participant in the economy, it will not only be benefitting the Crow people or their jobs, it will be benefitting the region and the area. That is a lot of new money to the States and a lot of new jobs to the States.

To answer your question in detail, I didn't want to go into that too much but I had to say all that to get to this point to clarify that the jobs that could be created by the companies that are out there, or lack thereof right now, and your entrepreneurs that could be created, the jobs that could be

created, it is not a shift of wealth within the States. It is new money. It is new taxes. It is new opportunities. There is no telling what it is going to do like new roads, new bridges, new whatever, new opportunity.

It is about opportunity. Without that opportunity, like the Good Book says, "Faith is the substance of things hoped for, the evidence of things not seen." Without that hope, without that opportunity, a lot of people would lose faith.

Thank you.

Senator Ernst. God bless you, Mr. Stewart. Thank you for being here.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Ernst.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman. Thank you for holding the hearing.

We appreciate you all being here and testifying about this very, very important subject.

Mr. Booker, investment in energy infrastructure, including pipelines, provides good-paying jobs for American workers. I think we all very much agree with that.

I understand a recent study by the Institute for Construction Economic Research found pipeline construction supports more than 41,700 jobs for union workers, each year

generating over \$2.3 billion in wages.

Can you elaborate on the job opportunities in pipeline construction for your members?

Mr. Booker. Absolutely. Thank you for the question, Senator.

The pipeline industry, with discovery of the Marcellus Shale, the Utica Shale and the availability and technology that has allowed us to gain that natural resource, has been a tremendous benefit for all workers, union and non-union in the Northeast region from Ohio, Pennsylvania, West Virginia and on to the Northeast.

The discovery of that has allowed us to put a lot of people to work. If you look back at 2008 and 2009 when the economy crashed, the sector of the economy that kept going was in the pipeline industry and the discovery of the natural gas. It kept communities together, families together and people working.

The pipeline infrastructure, the lack of pipeline infrastructure is critically important. We need to modernize the pipeline infrastructure and build new pipeline infrastructure which is going to create the jobs for all Americans.

Senator Boozman. When you have obstruction and delays for obstruction and delay's sake, what does that do to things regarding, as you say, union and non-union workers, tribes, and

non-tribes?

Mr. Booker. We look for predictability just like the owner of the pipeline does and the end user. When you go home at night, you want to turn on the light, turn on your air conditioner and make sure it works.

For us, when unnecessary delays happen, when we have planned and done the training for the workforce to build that necessary infrastructure, to then have them be ready to go to work in that community and then they are back in the unemployment line. Their wages dramatically decrease and they are not able to contribute to the local economy.

It affects our training and our capacity to train tomorrow's workers as well.

Senator Boozman. I think you make a great point. You can play with good rules and you can play with bad rules. If you do not know what the rules are, it makes it very, very difficult to go forward. We appreciate that.

Mr. Stewart, I really do not have a question for you. I think you have answered all the questions in a very good way. I am glad you paid your way here to contribute. I want to go on record as agreeing with you that certainly States and tribes should have the ability to regulate water infrastructure. We need to work hard and I think this type of legislation reaffirms the importance of that.

Again, thank you very much for being here.

Mr. Stewart. Thank you.

Senator Boozman. Mr. Booker, it is clear that the implementation of Section 401 has created confusion resulting in delays of important infrastructure projects and we discussed the uncertainty.

Do you believe the Water Quality Certification Improvement Act helps restore predictability and certainty while balancing State and federal authorities?

Mr. Booker. I do. In my testimony, we believe in the States' rights. We believe there should be regulation. It has to be predictable though. You cannot change the rules of the game halfway through the game.

I think this is a necessary change that puts everyone in a predictable and certain way as to here are the rules, here is what you have to follow. If you can check every box, you will be able to build your project. If you cannot, then you are not. We support that.

Senator Boozman. Do you want to comment on that, Mr. Stewart? I know the tribes certainly are kind of the classic as far as uncertainty, rules changing and this and that?

Mr. Stewart. Oh, yes. Since I only have a little bit of time, we can sit down later and talk about this.

To answer your question, when we are trying to be good

actors, provide for our families, and try to do the things that need to get done, as a man and soon to be grandfather, I have to think about the generations before me, those that are coming.

We do not want to continue to move this goalpost. Water quality certification should mean certification of water quality, not what the Sierra Club wants or what this club or that club wants. It should mean what it says it is supposed to mean.

As a man, I was always taught that what you say is very precious. You cannot take it back. That falls in line with the integrity of a person and the integrity of the law. When we allow different entities, folks or States to break the integrity of that law, then we are violating the intent.

Those ramifications are very detrimental to not only the present generation but generations to come. It is something we just cannot play with. We have to be true to our word. Water quality certification should say what it says plain and simple.

Senator Boozman. We appreciate that. Certainly those are simple truths. As a fairly recent grandfather, you are going to enjoy that. That will be a very, very positive thing in your life.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Boozman.

Before turning to Senator Cardin, I would submit to the

record something Mr. Willardson referenced, which was the environmental impact statement for the Millennium Bulk Terminal. In that document, the State of Washington itself concluded that there would be no significant impacts to water quality, wetlands, surface waters or flood plains.

The State of Washington denied the project for political reasons. The State itself found these impacts were not problematic in its own environmental impact statement.

I am going to submit that for the record. Without objection, so ordered.

[The referenced information follows:]

Senator Barrasso. Senator Cardin.

Senator Cardin. Mr. Chairman, thank you very much.

I thank all the witnesses for being here today.

I would ask consent, if I might, to put into the record, a letter from the Attorney General of Maryland, Brian Frosh, raising concern with regard to S. 3303; a letter from the Association of Clean Water Administrators also expressing concern with regard to this legislation; and related documents.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Cardin. Thank you, Mr. Chairman.

Mr. Willardson, I want to ask a practical question. I have significant concerns about the changes being suggested with regard to the 401 waiver from the States. I want to ask about the practical problem of shortening the period to 90 days.

There is an issue whether there is adequate time for a State to make that assessment within a 90-day period. There are documents that have to be received and so forth. One of the unintended consequences could be that because there is insufficient time and information, a States rejects the waiver, therefore counterproductive to the intent of the bill, to expedite the process.

I would like to get your assessment as to whether this is a real concern or not. I have heard from people in Maryland about this particular issue. I would like to get your assessment as to how realistic it is for States to have adequate information and make an adequate review within a 90-day period?

Mr. Willardson. As I noted, most of the decisions are currently made within 90 days. Obviously, with a very complex project, such as the Millennium Pipeline, it can take more time. The FERC licensing process for hydropower and relicensing generally takes about five years. FERC has an alternative licensing process which applicants can now opt in to begin early consultation with the States.

Generally, the 401 question is brought in about two years before the license would be issued again. Currently, States have one year to make those determinations. Ninety days would be very difficult on complex projects. Obviously, many of these are complex projects.

As I said, we have not dealt with the pipelines to that degree but I would point out in the State of Washington, their determination is already under review by the Water Quality Commission which will make a determination as to whether or not the director's decision was appropriate.

We are very cognizant of the energy needs of this Country, the infrastructure needs, and permitting those in a timely manner. I would point to the Western Governors Association's energy policy which is in all of the above.

I would also point out from a council perspective that we have worked very hard with our tribal members and with the Crow as well on Indian water rights settlements. Under the Clean Water Act, tribes are treated as States. They have 401 water quality permitting authority where they have been granted treatment as tribes.

These are very complex projects. Most of them could be completed within the 90 days. Some, I think, it would be very difficult to get the information to make a sound decision.

Senator Cardin. You may not be familiar with the Conowingo

Dam which is a very important energy source for the East Coast of the United States, the second largest electrical energy generating dam on the East Coast of the United States. It is a very, very important source of energy.

Exelon is the operator of that particular facility. It is in the relicensing stage and review is currently underway. The expectation is that ultimately the waiver will be granted but it will be based upon certain conditions. That will take well beyond any 90-day period for that process.

It is a pretty complicated process on the Susquehanna and is extremely controversial in regard to water quality in the Bay. Particularly with recent storms, the amount of surge of materials that are released is a major concern. A project like that, it is not realistic to look at a 90-day period.

Mr. Willardson. It would be very difficult to make that determination in 90 days, with the exception of the timing of the request for the certification. If that request comes following the completion of the environmental impact statement so those questions are coordinated, then the State could act, given that information, promptly.

Obviously, it would be counterproductive if the time is not sufficient for the State to act because they would simply, as they do now, deny the permit generally without prejudice so it could be resubmitted when there was sufficient information or a

complete application.

Senator Cardin. That is how I expect you would see some of these actions by the State in order to get more time if there was a hard time period they could not meet. My own assessment in a project like the Conowingo Dam is there are so many stakeholders. It is such a complicated process. I think it is already 40 years that this process goes forward.

The opportunity only presents itself once in a generation. It is the speed bump for a lot of consideration of different issues and a lot of stakeholders. It is a complicated process.

Mr. Willardson. Those permits are generally for 40 or 50 years for the operation of the dams. I was a resident of Philadelphia for a couple of years so I am familiar with the Susquehanna.

Senator Cardin. A lot of good things have happened during the certification process. Again, I do not think anyone is questioning the continuation of the dam; it is critically important for energy. It is also important for water quality that we get it right.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Cardin.

This bill does have the strong support of the American workers across the Country. I would like to enter into the record letters of support of the bill from representatives of

the International Brotherhood of Electrical Workers in
Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont
and Maine, as well as the Rhode Island Building and Construction
Trades Council.

[The referenced information follows:]

Senator Barrasso. I want to thank all the witnesses for being here. Thank you for your testimony and for your timely response.

The record will stay open for an additional two weeks. Members may submit written questions.

Kind of in response to Mr. Stewart's last answer where he talked about an organization or group, I think you mentioned the Sierra Club should not be able to stop projects because it is their agenda. There is a publication in the New Jersey Spotlight today, August 16, where it is very clear that Section 401 is viewed by environmental groups and some States as a tool to block energy projects, not a tool to keep water clean.

You talked specifically, Mr. Stewart, about the legislation and laws about clean water ought to apply to keeping water clean. The director of the New Jersey Sierra Club stated in this article in today's New Jersey Spotlight, which I am submitting to the record, "Section 401 review is probably the most effective tool we have to fight pipeline projects," not to keep water clean but to fight projects.

[The referenced information follows:]

Senator Barrasso. With that, I thank the witnesses. We appreciate you all being here.

This hearing is adjourned.

[Whereupon, at 11:28 a.m., the committee was adjourned.]